

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-213941

DATE: April 20, 1984

MATTER OF: Planning and Analysis, Inc.

DIGEST:

1. Where solicitation is issued on unrestricted basis, local government entity may compete with commercial concerns for government contract.
2. Certain offerors may enjoy a competitive advantage as a result of other federal, state or local programs. However, there is no requirement that the government equalize the competitive position of all potential offerors unless the advantage is the result of preference or unfair action by the government.
3. Protest is without merit in absence of evidence that contracting agency provided improper assistance to awardee to the detriment of the protester.
4. Protester was not prejudiced by agency officials' holding of discussions with offeror at offeror's place of operation. Record indicates that discussions were held at vendor's site for convenience of contracting officials and not for purpose of conducting site inspections. Also, discussions concerned offeror's price and did not involve issues regarding vendor's site or operation.
5. Agency decision to cancel initial solicitation because price was determined unreasonable without negotiations concerning price is not objectionable where price submitted by sole offeror was three times that of government estimate, 2-1/2 times the current contractor's price, offeror could serve only one court of 15 courts requiring the service at that price, and price competition was lacking.

Planning and Analysis, Inc. (PAI), protests the award of a contract to the Oakland County, Michigan, Department of Computer Services (Oakland County) for an automated jury

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selection system at the United States District Court in Detroit, Michigan, under request for proposals No. DCXOH-83-010R issued by the Administrative Office of the United States Courts (agency).

PAI protests that it is unfair to permit a local government entity which is subsidized by the taxpayers and has other competitive advantages over commercial firms to compete under this RFP. PAI further asserts that had it been aware that it was competing with a public sector offeror, it would not have participated because of the offeror's unfair advantage. Also, PAI objects to the agency's holding discussions at Oakland County's computer installation where agency officials allegedly reviewed its computer installation. PAI points out that it invited the agency officials to visit PAI facilities, but the agency officials declined, and discussions with PAI were held in Washington, D.C. PAI also alleges Oakland County improperly was provided information advising it that proposals based on a timesharing approach were required. Finally, PAI states that the agency report shows the decision to cancel an earlier RFP for the same services was made because PAI, the sole offeror, submitted a price that was determined unreasonable. PAI argues that the agency should have negotiated with PAI concerning its price before canceling and that PAI would have reduced its price had it been given the opportunity through negotiations.

We find the protest without merit.

The agency issued the initial RFP for its requirements on June 17, 1983, with the date for receipt of proposals stated as July 11, 1983. This date was extended to July 21, 1983, to allow offerors additional time to prepare a proposal. PAI submitted the only timely offer. The contracting officer found the price offered to be unreasonable based on the government estimate and, therefore, canceled the RFP. A revised RFP was issued on August 8, 1983. Two proposals were received--one from PAI and the other from Oakland County. The agency conducted technical and cost evaluations, discussions were held with both offerors, and best and final offers submitted. The agency awarded the contract to Oakland County based on its higher technical score and lower price.

With regard to the ability of a local government agency to bid on federal procurements, this Office has concluded that there is no prohibition against nonprofit, state-created institutions or associations competing with

commercial concerns for government contracts in the absence of any statutory or regulatory policy to that effect. See International Alliance of Sports Officials, 63 Comp. Gen. (B-210491, B-210491.2, B-210491.3, January 10, 1984), 84-1 CPD 63; E.I.L. Instruments, Inc., 54 Comp. Gen. 480 (1974), 74-2 CPD 339. Similarly, we find no prohibition against a local government entity competing. An unrestricted procurement was utilized here to permit competition by all interested offerors and, under this type of solicitation, an agency cannot reject an offer submitted by a local government entity simply because of its status.

This Office has recognized that certain offerors may enjoy a competitive advantage as a result of other federal, state or local programs. We know of no requirement for equalizing competition by taking into consideration these types of advantages, nor do we know of any possible way in which such equalization could be effected. Ronald Campbell Company, B-196935, December 19, 1979, 79-2 CPD 424. The test to be applied is whether the competitive advantage enjoyed by a particular offeror would be the result of preference or unfair action by the government. Aerospace Engineering Services Corporation, B-184850, March 9, 1976, 76-1 CPD 164. There is no evidence in this case of any improper agency action in the conduct of the instant procurement.

Under these circumstances, we find no impropriety in the consideration and acceptance of Oakland County's offer.

PAI also alleges that Oakland County improperly was provided information during negotiations concerning offers on a timesharing basis. PAI concedes it was informed of this requirement through discussions with the agency, but appears to object to the agency similarly advising Oakland County of this requirement. The agency denies that it provided any information to the awardee other than that contained in the RFP. The agency states that the RFP was reasonably interpreted by both offerors as requesting timesharing services. Accordingly, both offerors were competing on a common basis. In the absence of evidence that the agency provided improper assistance to Oakland County to the detriment of PAI, we find this aspect of the protest without merit.

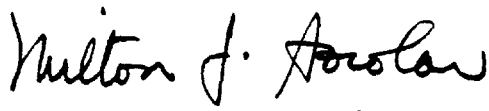
PAI alleges that agency employees visited Oakland County facilities to view the operating system, but declined to visit PAI's facility and this was prejudicial to the evaluation of PAI's offer. The agency reports that its

employees held discussions with Oakland County at the vendor's place of operation for convenience and economy--the contracting personnel were in Detroit on other business. The agency advises that the discussions were limited to the offeror's price and that clarification on this issue only was requested. The agency written record concerning the verbal discussions confirms that the discussions did not involve any issue regarding the Oakland County operating system, but were limited to price. Under these circumstances, we find no possible prejudice to PAI.

Finally, PAI questions the cancellation of the original RFP on the basis of price unreasonableness without the agency first attempting to negotiate a lower price with PAI. The agency determined that PAI's price was unreasonable because the price PAI submitted was three times that of the government estimate and 2-1/2 times the current contractor's price. Also, under the price offered, the agency could only provide the service to one of 15 courts in Detroit. Based on these facts, the contracting officer determined that, although the RFP allowed for negotiation with the offeror, the sole offeror's price was so excessive as to make negotiations impracticable.

The record shows that PAI's initial price was significantly out of line with the agency's estimate and price competition was not possible because PAI was the sole offeror. Thus, the contracting officer reasonably believed negotiations would not be beneficial. Under these circumstances, we find the decision reasonable to cancel without negotiating with PAI and to reissue the RFP. In this connection, we have recognized that the potential for cost savings is a legitimate basis for canceling a negotiated solicitation. See RCA American Communications, Inc., R-210239, May 31, 1983, 83-1 CPD 577.

We deny the protest.

for 
Comptroller General
of the United States